



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AO31

Eligibility of Disabled Veterans and Members of the Armed Forces with Severe Burn Injuries for Financial Assistance in the Purchase of an Automobile or Other Conveyance and Adaptive Equipment

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulation regarding a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. The amendment is necessary to incorporate statutory changes made by the Veterans' Benefits Act of 2010.

DATES: Written comments must be received on or before [insert date 60 days after the date of publication in the FEDERAL REGISTER].

Applicability Date: VA would apply this rule to all claims for benefits received on or after October 1, 2011.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW,

Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to RIN 2900-AO31 "Eligibility of Disabled Veterans and Members of the Armed Forces with Severe Burn Injuries for Financial Assistance in the Purchase of an Automobile or Other Conveyance and Adaptive Equipment." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 461-9487. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 803 of Public Law 111-275, the Veterans' Benefits Act of 2010, amended subsection 3901(1)(A) of title 38, United States Code (U.S.C.), by reformatting the statute and adding "severe burn injury (as determined pursuant to regulations prescribed by the Secretary)" as one of the disabilities that VA will consider when making a determination of eligibility for financial assistance in the purchase of an automobile or other

conveyance and adaptive equipment. Pursuant to the authority granted to the Secretary in 38 U.S.C. 501(a) and 3901(1)(A)(iv), as added by the Veterans' Benefits Act of 2010, VA proposes to amend 38 CFR 3.808 to define the term "severe burn injury."

The purpose of 38 U.S.C. 3901 and 3902 is to provide an automotive allowance and adaptive equipment to veterans having certain severe disabilities that may impair their ability to operate a standard motor vehicle. Prior to the enactment of the Veterans' Benefits Act of 2010, the automobile allowance was authorized only for the loss or permanent loss of use of one or both hands or feet or for permanent impairment of vision of both eyes. In discussing the proposed extension of this benefit to veterans with severe burn injuries, the Chairman of the Senate Committee on Veterans' Affairs explained that, "[d]ue to the severe damage done to their skin, individuals with these disabilities experience difficulty operating a standard automobile not equipped to accommodate their disabilities" and that the proposed legislation "would help them obtain vehicles with special adaptations for assistance in and out of the vehicle, seat comfort, and climate control." 156 CONG. REC. S7656 (daily ed. Sept. 28, 2010) (statement of Chairman Akaka).

For purposes of determining eligibility of disabled veterans and members of the Armed Forces for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment, VA proposes to define severe burn injury as a disability resulting from a severe burn that is a deep partial thickness

or full-thickness burn resulting in scar formation that causes contractures and limits motion of one or more extremities or the trunk and precludes effective operation of an automobile.

Skin that has experienced deep partial and full-thickness burns is never restored to normal. In a deep partial thickness burn, there is complete destruction of the epidermis and severe damage to the dermal layer. Healing may occur with hypertrophic scars and keloid formation. In a full-thickness burn, there is complete destruction of the epidermis and dermis, and there may be some damage to the underlying subcutaneous fat layer. Scar tissue from these types of burns is thin, fragile, and prone to chronic ulceration. Scars resulting from these burns may cause disfigurement. The most frequent cause of disability is burn scar contracture. This residual prohibits movement of a joint in its normal range of motion and influences not only the underlying joint but also the adjacent joints. Burn scar contracture is not only limited to the extremities but also can occur as a result of burns to the trunk, resulting in postural impairments.

Although full-thickness burns are generally more disabling than deep partial thickness burns, depending upon location, a deep partial thickness burn may result in more scarring with contracture limiting motion and, therefore, be more disabling than a full-thickness burn. For example, a deep partial thickness burn resulting in limited motion may involve an important joint such as a thumb, hand, or elbow which are more crucial in operating an automobile than other

joints. Additionally, some individuals tend to be significant scar formers based on race and ethnicity. For example, one individual with a deep partial thickness burn may be more significantly disabled due to the exuberance of scar formation with contractures than another individual with a well treated full-thickness burn. As such, the category of burn injury is not always the predictor of disability. Rather, disability must be based on the eventual limitation of motion of which joint is involved. For all these reasons, VA proposes to consider both "deep partial thickness burns" and "full-thickness burns" as severe burn injuries.

We believe that VA's definition of severe burn injury for purposes of determining eligibility of disabled veterans and members of the Armed Forces for financial assistance concerning the purchase of an automobile or other conveyance and adaptive equipment certification is consistent with congressional intent. This definition generally reflects the purpose found at 38 U.S.C. 3901 and 3902 to authorize the automobile allowance or other conveyance and adaptive equipment for severely disabling conditions affecting the veteran's ability or military member's ability to operate a standard automobile in a safe and effective manner. As such, VA believes that it is fair and reasonable to define a severe burn injury as a deep partial thickness or full-thickness burn resulting in scar formation that causes contractures and limits motion of one or more extremities or the trunk and precludes effective operation of an automobile.

Therefore, in 38 CFR 3.808, VA would redesignate current paragraph (b)(4) as (b)(5) and add a new paragraph (b)(4) that adds "severe burn injury," and the criteria noted above, as one of the conditions that determines entitlement for a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. Additionally, VA would replace the title "Automobiles or other conveyances; certification" with "Automobiles or other conveyances and adaptive equipment; certification" to mirror the statutory provisions of 38 U.S.C. 3901 and 3902. Finally, VA would revise the authority citation for paragraph (b) to include 38 U.S.C. 3901. Since the statutory amendment authorizing this regulatory change became effective on October 1, 2011, VA would apply this rule to all claims for benefits received on or after October 1, 2011.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This proposed rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt

from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for the programs affected by this document are 64.013, Veterans Prosthetic Appliances; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 24, 2012, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: October 25, 2012

William F. Russo, Deputy Director
Office of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3 — ADJUDICATION

Subpart A-Pension, Compensation, and Dependency and Indemnity

Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.808 as follows:

- a. Revise the section heading.
- b. Redesignate paragraph (b)(4) as (b)(5).
- c. Add a new paragraph (b)(4).
- d. Revise the authority citation at the end of paragraph (b).

The addition and revisions read as follows:

§ 3.808 Automobiles or other conveyances and adaptive equipment; certification.

* * * * *

(b) * * *

(4) A severe burn injury. For the purposes of this section, a severe burn injury is defined as follows:

(i) Deep partial thickness or full-thickness burns resulting in scar formation that causes contractures and limits motion of one or more extremities or the trunk and precludes effective operation of an automobile.

(5) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 3901, 3902)

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